

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-30155-MAP

LAWRENCE W. HAMMARE,
Plaintiff

v.

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA, and
T-MOBILE USA, INC.,
Defendants

COMPLAINT

PARTIES

1. The Plaintiff, Lawrence W. Hammare, resides at 37 Lake George Road, Wales, Hampden County, Massachusetts 01081.
2. The Defendant, The Prudential Insurance Company of America, is a corporation registered to do business in the Commonwealth of Massachusetts, with a usual place of business at Post Office Box 13480, Philadelphia, Pennsylvania 19101.
3. The Defendant, T-Mobile USA, Inc., is a Delaware corporation, registered to do business in the Commonwealth of Massachusetts, with a usual place of business at 12920 S. E. 38th Street, Bellevue, Washington 98006.

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JURISDICTION AND VENUE

4. The Court has jurisdiction over this matter pursuant to the provisions of 29 U.S.C. § 1132 (e).
5. The Court has proper venue over this matter pursuant to the provisions of 28 U.S.C. § 1391 (b), in that Massachusetts is the judicial district in which a substantial part of the events giving rise to the Plaintiff's claim occurred.

FACTS

6. On or about July 2004, the Plaintiff was employed by the Defendant, T-Mobile USA, Inc., as a sales person.
7. At said time, the Plaintiff injured his back but continued to work for the next few months.
8. During said next few months, the Plaintiff's condition worsened.
9. On December 15, 2004, the Plaintiff received a verbal warning from his supervisor that he failed to meet his sales quota.
10. The Plaintiff's failure to meet his sales quota was due to his inability to travel in an automobile which, in turn, was due to the increasing severity of his back injury.

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11. On or about December 20, 2004, the Plaintiff began treating with a physician for his back problem.
12. On or about December 26, 2004, the Plaintiff ceased working.
13. The Plaintiff's treating physician stated in writing that the Plaintiff's lower back pain was exacerbated by repetitive sitting, standing, and walking, and that the Plaintiff was "currently unable to perform the essential job duties of his occupation."
14. In December 2004, the Plaintiff applied for short term disability benefits.
15. Said application was denied and all subsequent appeals have been denied.

COUNT I
The Prudential Insurance Company of America

16. Paragraphs 1 through 15 of the Complaint are hereby incorporated into and made Paragraphs 1 through 15 of Count I.
17. The Plaintiff is covered under Group Policy Number 41982, issued by The Prudential Insurance Company of America to T-Mobile USA, Inc.

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18. Said policy provides for twelve (12) weeks of short term disability benefits.
19. Said benefits were, within limitations, sixty (60%) percent of a disabled person's weekly earnings.
20. The Plaintiff was disabled under the definition of disability as set forth in said short term disability policy, from December 26, 2004, to March 28, 2005.
21. During said period, the Plaintiff at times remained disabled as that term is defined in said group short term disability policy.
22. Since the onset of said disability, The Prudential Insurance Company of America has refused to pay benefits to the Plaintiff, under said policy which properly are payable to the Plaintiff.

COUNT II
T-Mobile USA, Inc.

23. Paragraphs 1 through 22 of the Complaint are hereby incorporated into and made Paragraphs 1 through 22 of Count II.
24. At all times, the Plaintiff was covered under a short term disability plan provided by his employer, T-Mobile USA, Inc., and administered by The Prudential Insurance Company of America.

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25. Said short term disability plan provided for twelve (12) weeks of benefits.
26. Said benefits were payable within limits at the rate of sixty (60%) percent of the employee's weekly earnings.
27. Commencing on December 26, 2004, and ending on March 28, 2005, the Plaintiff was disabled as that term is defined in said short term disability plan.
28. Since the onset of disability on December 26, 2004, the Defendant T-Mobile USA, Inc. has refused to pay benefits to the Plaintiff under said short term disability plan, which otherwise were properly payable to the Plaintiff.

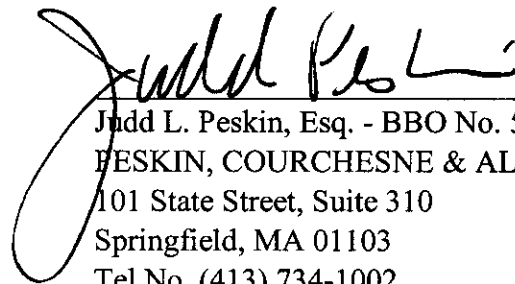
WHEREFORE, the Plaintiff prays that this Court:

- I. Affirmatively order either The Prudential Insurance Company of America or T-Mobile USA, Inc., or both, to pay all benefits provided in Group Policy Number 41982, or in the short term disability plan provided by T-Mobile USA, Inc., to the Plaintiff for the period commencing December 26, 2004 and ending March 28, 2005;
- II Award reasonable attorneys' fees to the Plaintiff;
- III Award money damages to the Plaintiff; and

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IV Award such other relief as this Court finds proper and just.

Respectfully submitted, the Plaintiff, Lawrence W.
Hammare, by his Counsel

A handwritten signature in black ink, appearing to read "Judd L. Peskin", is written over a horizontal line. The signature is stylized with a large, looping initial "J".

Judd L. Peskin, Esq. - BBO No. 556134
PESKIN, COURCHESNE & ALLEN, P.C.
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Jlp@pcalaw.net
Date: June 22, 2005

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

LAWRENCE W. HAMMARE

DEFENDANTS

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
and T-MOBILE USA, INC.(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF HAMPDEN
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Judd L. Peskin, Esq., BBO# 556134
Peskin, Courchesne & Allen, P.C.
101 State Street, Suite 301
Springfield, MA 01103
(413) 734-1002

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

29 U.S.C. c. 1132 Defendants denied Plaintiff benefits under short term disability plan.

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC (405(g)) <input type="checkbox"/> 863 DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rats/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influence and Corrupt Organization <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) LAWRENCE W. HAMMARE
v. THE PRUDENTIAL INSURANCE COMPANY OF AMERICA and T-MOBILE USA, INC.
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LIST ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1))

<u>✓</u>	I.	160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT
	II.	195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.
	III.	110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
	IV.	220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
	V.	150, 152, 153.
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E))
NONE
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT? NO
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? NO
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2401)

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? NO
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY)? (SEE LOCAL RULE 40.1(C)) YES _____ OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? (SEE LOCAL RULE 40.1(D)) YES _____
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES _____
(a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? _____
9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? WESTERN
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION _____ OR WESTERN SECTION _____

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Judd L. Peskin, Esq. Peskin, Courchesne & Allen, P.C.ADDRESS 101 State Street, Suite 301, Springfield, MA 01103TELEPHONE NO. 734-1002

(COVER.SHT-08/90)

APPENDIX C